

**Testimony of Ron Franks  
Secretary of the Maryland Department of Natural Resources**

**Before the House Water Resources and Environment Subcommittee  
Committee on Transportation and Infrastructure**

**May 4, 2006 Hearing on the Reauthorization of the Chesapeake Bay Program**

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Good morning, I am Ron Franks, Secretary of the Maryland Department of Natural Resources. On behalf of Governor Ehrlich, your former colleague and the current Chair of the Chesapeake Executive Council, thank you for your interest in the progress and future of the Chesapeake Bay Program, and the opportunity to recommend improvements from the perspective of the Bay partners. I also want to thank Congressman Gilchrest for his commitment to restoring the Chesapeake Bay and for sponsoring the bill to reauthorize the Program.

**The Chesapeake Bay Program**

The Chesapeake Bay Program is a voluntary partnership of the States that comprise the Bay watershed and U.S. Environmental Protection Agency established in 1983 with the signing of the first Chesapeake Bay Agreement.

When the Bay Program was established, it was the first time that the Bay states and the federal government came together to set goals and responsibilities for restoring the Bay. This commitment was not only a first for the Bay States, it was an unprecedented attempt at restoring a large-scale estuarine ecosystem. In undertaking this enormous task there were and still are no “how to” books, levers or spigots that can restore what once was. What we have committed to do is something that no state or country has accomplished. We are leading the way for large-scale estuarine ecosystem restoration.

The Bay restoration effort started with a set of untested assumptions and a very steep learning curve. The scientists, managers and decision-makers who guide the Bay Program have had much to learn regarding the complexities of this dynamic ecosystem. This effort has required putting all of the interdependent pieces together, i.e., the scientific, technical, fiscal, legal and socio-political dimensions of the Bay restoration effort. Building the requisite expertise and infrastructure to attain and sustain the health of the Bay is one of the primary, yet most unrecognized, accomplishments of the Bay Program. In this sense, there have been enormous strides from where we started.

Since 1983, the Chesapeake Bay Program Partners have revisited, renewed and revised their commitments in subsequent agreements, most recently in the *Chesapeake 2000 Agreement*. This Agreement specifies 102 commitments. These include restoring and protecting the oyster, crab, and fisheries populations; restoring and protecting critical habitats such as wetlands, forests, and submerged aquatic vegetation; improving water quality by reducing nutrients, sediments and toxics; improving the management of lands within the Bay watershed to better control runoff; and instilling a greater sense of stewardship ethic within communities, at all levels of government, and among businesses, industries, and private citizens. The diversity of commitments which need to be met to restore the Chesapeake Bay reflects the enormity of the challenge that faces all of us.

### Accomplishments to Date

Through the partnership of the Chesapeake Bay Program and resources that have been provided, major restoration efforts have been undertaken. The outcome of these efforts when viewed across the immensity of the Bay's 64,000 mile watershed so far has been mixed.

Overall, nutrients and sediments in the Bay have decreased despite tremendous population growth and rapid development although not to the target reduction levels. We are more than halfway in meeting the nitrogen pollution reduction targets from wastewater treatment plants, and in the case of reducing phosphorus from those plants we have achieved 80 percent of our target thresholds. For agricultural pollutants we are approaching the halfway mark.

We have developed watershed management plans for 9.7 million acres of watersheds within the Bay — 42 percent of our goal.

Bay grasses have increased by nearly 35,000 acres since the low point of 1984 to 73,000 acres which is 39 percent of the way towards our restoration goal of 185,000 acres. For wetlands, we have restored 9700 acres, created 338 acres, and enhanced over 49,000 acres, and have met 40 percent of the restoration goal. The Bay partners have more than doubled the original goal for restoring riparian forest buffers, and have set a new goal of 10,000 miles for restored buffers with over 4600 miles already restored.

The 2010 goal to conserve 20 percent of the Chesapeake watershed has been met.

The original migratory fish passage restoration goal of 1,357 miles has been surpassed by nearly 500 miles and a new goal of over 2,800 miles has been established.

There has been a dramatic recovery of rockfish in the Bay but the species is showing signs of stress with an increasing number of diseased fish. The bald eagle population has been restored. The blue crab population appears to be stabilizing after several years of decline. Despite millions of dollars in funding, the native oyster population has continued to decline due to disease. Currently, an independent and fastidious study is

underway to advise the States of Maryland and Virginia on the feasibility of replacing the lost filtering function of the native oysters with oysters which are not native to the Bay.

Numbers, percentages and letter grades do not tell the whole story on progress. For example, what might seem small in terms of Bay-wide percentage reductions in nutrients can be substantial in terms of the amount of nutrients reduced in local watersheds and the resulting water quality improvements. Sewage treatment upgrades have resulted in increases of submerged aquatic vegetation by as much as 1000 percent in some waterbodies providing additional water quality and habitat benefits. This type of progress has not been seen uniformly throughout the Bay and its tributaries but it does show that when the pieces are in place, the predicted benefits are likely to occur.

Further progress is on the way —

- Maryland has enacted the Bay Restoration Fund, also known as the flush fee, which will upgrade sewage treatment plants greatly reducing the introduction of nutrients to the Bay. The Fund was recently cited by Harvard's Kennedy School of Government as one of the Top 50 Government Innovations for 2006. The proposed biennial budget for Virginia includes \$254 million for the installation of nutrient removal technologies at sewage treatment plants and \$37 million for best management practices on agricultural lands. Pennsylvania's Act 218 provides \$250 million in new bond money for sewer and water infrastructure construction and the installation of nutrient reduction technologies at wastewater treatment facilities. In addition, in 2005 voters approved Pennsylvania's Grower Greener II plan which will invest \$625 million to clean up rivers and streams; protect natural areas, open spaces and working farms; and shore up key programs to revitalize and improve the quality of life of communities across the Commonwealth.
- Pennsylvania also adopted last year two mandatory measures specifically to meet the Chesapeake Bay requirements. The Agricultural, Communities and Rural Environment (ACRE) initiative significantly increases the number of farms that must comply with specific regulations for nutrient management and erosion and sediment control. Nutrient limits will also be included in operation permits for wastewater treatment facilities and industrial facilities as they come up for renewal. Pennsylvania is also developing a Nutrient Trading Program that will stimulate innovation and cost-effective approaches to reach and maintain its water quality goals.
- The District of Columbia has embarked on a long-term control plan that will reduce combined sewer overflows by 96 percent.
- All of the Bay jurisdictions have developed tributary strategies that identify the level of effort required to meet the nutrient loading reduction goals for their tributaries. Maryland and West Virginia have developed implementation plans providing pragmatic approaches to taking the actions identified as needed in their strategies. In Virginia, legislation was signed into law last month to

require the development of a master plan to clean up all of Virginia's polluted waters, focusing on measurable and attainable goals, the prioritization and phasing of projects, and funding needs.

- The Commonwealth of Virginia has recently committed to preserving at least 400,000 acres of land in the State by the end of this decade. For Fiscal Year 2007, Maryland has committed nearly \$300 million for land conservation.
- To reduce atmospheric deposition, Maryland has just enacted the *Healthy Air Act* to reduce nitrogen, sulfur and mercury emissions from power plants.

The combination of these measures may well bring us closer to the tipping point at which the synergistic dynamics of improvements to the Bay ecosystem will further accelerate progress and realize a variety of water quality and living resource benefits.

#### The Need for Improvements – The GAO Recommendations

The recent review of the Chesapeake Bay Program by the U.S. General Accounting Office (GAO) found that while the Bay Program has over 100 measures to assess progress toward meeting restoration commitments, the Program has not developed an integrated approach that translates these individual measures into an assessment of overall progress. The GAO report criticized the over-reliance on modeling data in reporting conditions within the Bay that tended to overstate the nutrient and sediment reductions which have occurred. As for progress in the implementation of restoration measures, the GAO found that the Bay Program does not have a comprehensive, coordinated implementation strategy for meeting its objectives and managing its limited resources.

The GAO recommended that the Chesapeake Bay Program Office (1) develop an integrated assessment of conditions in the Bay; (2) revise its reporting on conditions to improve the effectiveness and credibility of its reports; and (3) develop a comprehensive, coordinated implementation strategy based on available resources.

We agree with the findings and recommendations of the GAO report.

Our understanding is that these findings and recommendations provided a foundation for the development of H.R. 4126. I want to compliment Congressman Gilchrest on his legislation which obviously reflects much thought and discussion. The key thematic element of H.R. 4126 is how to bring the Bay restoration effort to the local level. The bill proposes a variety of means to do so – improving the public's knowledge of the conditions of local waterbodies; placing greater priority on tributary strategy implementation; and building greater local capacity for environmental planning and management. We agree that improvements are needed in all of these areas.

In the remainder of my testimony, I will discuss how the issues raised in the GAO report are being addressed and provide suggestions for further improvements to the program through changes to H.R. 4126.

## Improving Reporting on the Health of the Bay and Restoration Efforts

The deficiencies with reporting on the health and restoration of the Bay were apparent to the Chesapeake Bay Program partners before the GAO evaluation of the Chesapeake Bay Program. Efforts were already underway to correct these deficiencies prior to the GAO report. The new reporting formats have been released and are currently under review.

In measuring and reporting progress, the focus needs to shift from the Bay-wide perspective to local improvements through the implementation of on the ground management measures, and progress in filling the scientific, technical, and fiscal gaps that limit progress.

Future CBP reports on the restoration of the Bay will include information on the health of individual tributaries. H.R. 4126 proposes an annual requirement for the development of Tributary Health Report Cards. This is too frequent and redundant with reporting required every two years for the Integrated Impaired Waters List developed pursuant to Section 303(d) of the Clean Water Act. Annual reports are unlikely to show improvement from one year to the next that can be attributable to the implementation of management measures. Rather than requiring tributary report cards on an annual basis, it is suggested to make the 303(d) List serve both purposes. Separate reporting requirements are likely to result in waste, inefficiency and contradictory reports.

As we increase the resources dedicated to solving the problems of the Bay on a local scale, the scale of assessment may need to be refined to assess the effectiveness of local efforts. Increased water quality and habitat monitoring should be provided for in the legislation.<sup>1</sup>

H.R. 4126 would also require States to annually report on the nutrient and sediment load allocations of each basin; the principal sources by category; the technologies and practices used to achieve reductions; and funding used for implementation. Except for information on all funding used to implement best practices and technologies, this information is already being provided; however, because H.R. 4126 would require states to submit these reports for the previous fiscal year by November 30, this would allow only two months to collect the necessary data from numerous state and federal agencies. Currently, six months is provided to collect this information. Developing the information on funding used for best management practices will require substantially more time and resources. H.R. 4126 proposes to withhold state Chesapeake Bay Implementation Grants from those states that fail to submit this information within the prescribed timeframe. In regards to penalties, it should be noted that with the Clean Water Act programs in general, and the Chesapeake Bay Program in particular, responsibilities are interdependent regardless of to whom they are assigned. Ensuring that there is the

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<sup>1</sup> Extrapolating the information required by the legislation on the conditions in individual tributaries is likely to exceed the current effective resolution of the Bay model. Also, while the legislation recognizes the role that weather plays in the condition of the Bay, it is currently not technically feasible within the Bay model to credibly account for weather fluctuations.

necessary intergovernmental cooperation in meeting the increased reporting requirements will require at least six months and adequate funding to staff this responsibility.

### Bringing a More Strategic Focus to the Bay Program

Implicit in the recommendations of the GAO report is the need to adjust the scale of focus in both a geographical and chronological sense. As seen with the invariable results from the Chesapeake Bay Foundation's Annual Report Card, from a Bay-wide perspective, near-term improvements to the Bay's water quality on a broad scale are unlikely to be seen given the:

- Immensity of the 64,000 square mile watershed;
- Lag time between implementation and changes in water quality; and
- Significant gaps in understanding the affects of natural and human influences on the Bay ecosystem such as:
  - The technological limitations on modeling the Bay's dynamics,
  - Overcoming the diseases which plague the oyster population, and
  - Assessing and remedying inter-regional atmospheric deposition.

The GAO found that the allocation of Bay restoration resources needs a greater strategic focus. The foundation for this is already present within the tributary strategies. The Bay Program's planning and assistance activities should be concentrated on the implementation of tributary strategies with a targeted focus that shifts among priority watersheds over time. Maryland and the U.S Environmental Protection Agency (EPA) have recognized the need for this change in approach by targeting limited resources where there can be a clear showing of substantial and significant improvement such as with the Corsica River Initiative. It is important that this legislation supports and expands those efforts.

### Increasing Local Responsibility and Assistance

H.R. 4126 attempts to further local responsibility for implementing management measures by having the Chesapeake Bay Program assign measurable goals to local governments to meet sediment and nutrient reduction goals.

The Bay Watershed Model currently is not sufficiently detailed to sub-allocate nutrient loads at the local government level, and not the appropriate means to assign nutrient loads to the numerous townships, boroughs and cities in the basin. Pennsylvania alone has more than 1,200 municipalities of different sizes and settings.

In Maryland, local governments are being asked to identify near term and far term actions to be taken to achieve the Tributary Strategy goals. While these local actions are not based on specific reduction targets, they should result in measurable progress towards the

basin reduction limits, and will be regularly revisited and adjusted to the extent necessary to further reductions to meet the basin goal.

The establishment of local goals by the Chesapeake Bay Program would have far-reaching impacts on development plans, comprehensive plans, water and sewer plans, capital and operating budgets, and employment levels. Local governments must have a direct role in the establishment of those goals. Their proposed representation through the Local Government Advisory Committee will be insufficient for this purpose, as will the 120 days provided in H.R. 4126 for establishing local goals.

Most local governments have inadequate resources and capacity to develop and sustain the environmental protection and restoration mechanisms that will be required to meet the Bay Program goals. For example, huge amounts of information are available in Geographic Information Systems and monitoring databases but localities are currently unable to make full use of that information in their planning decisions. Although technical assistance is provided through a variety of programs and means, the establishment of a technical and planning capacity building program through a strategic reorientation of the focus of the Small Watershed Grants Program is needed.

Funding to assist local communities should be provided through the states. Where it is most cost-effective, those funds should be strategically targeted to those communities where protection and restoration activities have the greatest potential benefits to the Bay.<sup>2</sup> Funding for the Small Watershed Grants Program should be strategically concentrated in those communities that are engaged in leveraged partnerships for large-scale coordinated restoration efforts rather than to funding isolated projects. Projects should further the implementation of tributary strategies and local watershed management plans, specify their nutrient and sediment reduction benefits, and be reviewed for their technical sufficiency and feasibility.

Local comprehensive planning should further the Bay water quality and habitat objectives by using local planning and regulatory tools that control stormwater runoff, minimize impervious surfaces, utilize nutrient reduction technology for on-site disposal systems, protect open space and forests and ensure that sprawl and densities do not overwhelm the natural resource amenities of communities such as groundwater and surface water drinking water supplies.

#### Broadening the Federal Commitment to the Restoration of the Bay

The reauthorization for the Chesapeake Bay Program should recognize that the role of the federal government in restoring the Bay extends beyond the activities of EPA. H.R. 4126 would amend the federal agency sub-watershed planning and compliance provision of the Clean Water Act section pertaining to the Chesapeake Bay Program. The section should be further amended to require that federal agencies develop tributary strategy

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<sup>2</sup> It should be noted that urban stormwater practices can be some of the least cost-effective. The most cost-effective practices may be on agricultural lands. States should have the flexibility to direct cost-share dollars to county conservation districts to assist farmers directly.

implementation plans or, in the alternative, execute their activities to be consistent with the implementation of jurisdictional tributary strategies to the maximum extent practical; and that their activities should be reported to the appropriate jurisdictions in a timely manner.

As mentioned throughout these comments, substantially increased federal support is needed for the Bay restoration effort, particularly for on the ground implementation and the staff necessary to facilitate implementation. A level of support comparable to that dedicated to the restoration of the Everglades and proposed for the Louisiana coast has been documented and is justified. As a starting point with this legislation, the Chesapeake Bay Program should be authorized at an annual level of at least \$50 million with the increase dedicated to implementation through state Chesapeake Bay Implementation Grants (CBIG).

I would like to note that throughout my testimony, I have mentioned how states have recently greatly increased their financial commitments to the Bay restoration. A continued decline in federal appropriations for Clean Water Act programs will likely cancel out the promised benefits of this increased state spending. Let us not forget, that clean water is not a luxury, it is a necessity for our health, economies and quality of life. Pursuant to its authority over interstate waters, the federal government has a basic responsibility for protecting these waters in partnership with the states. I ask that the federal government not forego its commitment to do so.

Lastly, I ask for your perseverance. The States of Maryland, Delaware, New York, West Virginia, Commonwealths of Pennsylvania and Virginia, and District of Columbia are in this for the long haul, and for all of the reasons that I have mentioned it will be a long haul. I am proud to be engaged in this effort to restore the Chesapeake. As a government official, it is as worthy a cause as one can be engaged in. I hope that you will agree that the program deserves your continued support.

I look forward to continuing to work with you on this legislation and other efforts to restore the Bay. Again, thank you for your invitation to testify.

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